

### REMARKS

In order to emphasize the patentable distinctions of Applicant's invention over the prior art, claim 1, as well as claims 2 – 13 dependent thereon, have been amended to recite that the financial practices of a contractor's business, determined by an independent third party based on answers provided by selected candidates, is used to predicate risk ranking when securing lines of credit for the contractor's business. This amendment to claims 1 – 13 is clearly supported by the original specification.

As amended, claim 1, as well as claims 2 – 13 dependent thereon, discloses a contractor certification system that comprises a survey means comprising a questionnaire provided to selected candidates within different organizational levels of a contractor's business. Questionnaires are provided to selected candidates comprising workers, foremen, project managers, engineers, and principals and are utilized for gathering answers concerning information detailing the contractor's business and financial practices. Answers given by the selected candidates representing different organization levels within the business are gathered and used for assessing the contractor's business and financial practices by an independent third party. An assessment of the financial practices is used to predicate risk ranking when securing lines of credit for the contractor's business. Mapping means for studying the answers provided to the questionnaire are utilized in selecting on-location job site visits and candidates for interviews. On-location assessment means comprise asking questions to each of the candidates selected through the mapping means and observing examples of the contractor's business practices and financial procedures. From the survey and on-location assessment means there is carried out a comparison means for assessing the

contractor's business and financial practice. This provides a basis for ranking the contractor in comparison with industry standards. Additionally, applicants' claims 1 – 13 require reporting means for providing a grade indicative of the contractor's rank. The combination of features required by applicants' claims 1 – 13 provides a system that concisely determines a contractor's business and financial practices in a manner so that financial institutions can rely on the information when providing lines of credit to a contractor.

The combination of features required by applicants' claims 1 – 13 provides a system that concisely determines a contractor's business and financial practices by probing the intricacies of a contractor's business through surveying selected candidates from different organizational levels. An objective evaluation of a contractor's risk value for surety and lending institutions is achieved through the combination of features required by applicant's present claims 1 – 13. Specifically, the approach of surveying candidates from different organizational levels provides a multifaceted, accurate representation of the daily practices of the contractor's business. In addition, third party assessment, analysis, and on-location direct questioning and observation, as required by present claims 1 – 13, further facilitates an accurate representation of the contractor's business practices. Direct questioning and observation of business practices by non-biased third party assessors provides unique advantages that yield a highly reliable ranking, which can be relied upon by lenders with confidence. Such reliance and confidence levels can effectively be realized by lenders, contractors, and consumers alike. They lead to lower interest rates, a productive relationship between the lenders and contractors, and overall lower costs to consumers.

**I. Claim– 35 U.S.C §112**

The Examiner has rejected claims 1 – 13 under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner has stated that claim 1 recites the limitation “said mapping means” in limitation “d” does not have sufficient antecedent bases. While the Examiner does note that “mapping means” is cited in limitation “c”, he indicates that the mapping means in limitation “c” is directed towards the answers provided to questionnaires, and it is unclear if the “mapping means” of limitation “d” is directed towards the answers to the questionnaire (as in limitation c). As such, the Examiner has requested clarification as to “mapping means” in limitation “d”.

“Mapping means” in limitation “d” is directed towards the answers provided to questionnaires as is utilized in limitation c, and therefore, applicants submit that a proper antecedent base exists in limitation “d”. Limitation “c” of claim 1 requires “mapping means” appointed for studying the answers provided in questionnaires to select job site visits and candidates for interviews. Limitation “d” of claim 1 requires on-location assessment means for determining business and financial practices at the contractor's operations. The assessment means of limitation “d” comprises asking questions to each of the candidates, the candidates having been selected through the mapping means of limitation “c” (i.e. after studying the answers provided in the questionnaires), and observing examples of the contractor's business practices and financial procedures.

In view of the amendment clarifying the term “mapping means” in limitation “d” of claim 1, reconsideration of the rejection of claims 1 – 13 under 35 USC §112, second paragraph, for insufficient antecedent basis, is respectfully requested.

## **II. Claim Rejections – 35 USC §103**

The Examiner has rejected claims 1 – 13 under 35 USC §103(a) as being unpatentable over US Patent No. 5,765,138 to Aycock et al. in view of GuruNet’s “Business Evaluation Statements” (hereinafter, “GuruNet”), further in view of US Patent Application No. 2002/0099586 A1 to Bladen et al.

The Examiner has stated that Aycock et al. teaches a contractor certification (supplier evaluation) system comprising survey means comprising a questionnaire (RFP/RFQ), which is provided to selected candidates (suppliers that desire to be qualified as vendors) within a contractor’s business for gathering answers concerning information detailing business and financial practices (**design, production, distribution, serviceability, and reliability of the supplier’s product or service**), said answers being used for assessing business (service and support) and financial practices (price and availability) of said contractor’s practices by an independent third party (the purchasing agent identifying the set of technical requirements that need to be met may be a contracting department of the buying entity, or an independent agent acting on behalf of the buying entity). (Examiner cited Aycock, col. 1, lines 55 – 56; col. 6, lines 1 – 9). Applicant respectfully disagrees.

In addition, the Examiner has stated that the system in Aycock et al. teaches on-location assessment (on-site audit) means for determining (validating) business and

financial practices at the contractor's operations, said assessment means comprising asking questions to each of said candidates selected through said mapping means (the RFP/RFQ questions are directed towards a set of technical requirements that need to be met by prospective vendors and towards a set of selected quality maturity questions, thus the questions are based on a "mapping" of technical requirements; the questions are weighted corresponding to their relative sophistication or relevance to the project objective, thus the importance of the responses to the questions have been "mapped") and observing examples of the contractor's business practices and financial procedures (the on-site audit includes validating the supplier responses to the RFP/RFQ, either by performing actual tests on hardware equipment or software systems, and / or reviewing the quality control procedures and processes at the supplier site). (Examiner cited Aycock, col. 1, lines 45 – 49; col. 3, lines 24 – 29; col. 6, lines 19 – 54; col. 7, lines 62 – 65; col. 8, lines 27 – 31; col. 12, lines 47 – 50).

The Examiner has stated that the system in Aycock et al. teaches comparison means (risk assessment) for assessing business and financial practices (**technical capabilities**), ranking the contractor in comparison with industry standards. Specifically, the Examiner has stated that the supplier quality maturity assessment process is based upon national and international standards including ISO 9001/ISO 9000-3, which are industry standards for quality. Moreover, the Examiner has stated that reporting means (product database) for providing a grade indicative of said contractor's rank (competitive analysis of all vendors to determine the respective performance) is taught by Aycock et al. (Examiner cited Aycock, col. 8, lines 58 – 63, col. 9, lines 59 – 67, and col. 10, lines 1 – 17).

The Examiner has indicated that GuruNet teaches a set of assessment statements that can be used to evaluate the financial practices of a company. The Examiner concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Aycock et al. to include the evaluation statements directed towards business and financial practices presented by GuruNet to evaluate the financial practices of a potential contractor as a factor utilized by surety institution.

In addition, the Examiner stated that the combined teaching of Aycock et al. and GuruNet fail to teach a mapping means for studying answers provided to a questionnaire. However, the Examiner has indicated that Bladen et al. teaches a risk assessment system where performance can be compared against an industry benchmark using trend analysis graphs as results. The Examiner has concluded that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Aycock et al. to include a mapping means since it is quite advantageous for these graphs to be used to compare the overall performance of a contractor to industry standards or competitors, or to map their individual strengths and weaknesses.

Additionally, the Examiner has stated that Aycock et al. does not explicitly disclose the job title/role of organizations hierarchical position of survey recipients. However, Examiner has taken Official Notice that it is old and well known in the art to administer surveys/questionnaires to people with sufficient knowledge and authority needed to provide accurate responses. (See herein below in Section III for applicants' remarks pertaining to the Official Notice).

Applicant previously argued, via a response filed March 15, 2006, that the supplier evaluation system disclosed by Aycock et al. does not question or evaluate business and financial practices within the supplier's business, as required by applicants' claims 1 – 13, but instead merely deals with technical specifications, price and availability, service and support, selected quality maturity requirements, production, distribution, serviceability, and reliability of products or services appointed to be utilized to determine whether a supplier can qualify as a vendor (col. 6, line 2 – 5; col. 3, lines 9 – 13). The Examiner has disagreed with the Applicant's argument and has asserted that the technical specifications, price and availability, service and support, selected quality maturity requirements, production, distribution, serviceability, and reliability of products or services are metrics used in the evaluation of business and financial practices of a contractor. Moreover, the Examiner argued that the feature, namely, that the financial practices used to predicate risk ranking in securing credit, are not recited in applicant's claim, and although same is set forth in the specification, it is not read into the claim.

Amended claims 1 – 13 recite that the financial practices are specifically used to predicate risk ranking in securing lines of credit for the contractor's business. As such, applicants' amended claims 1-13 require that the system yield financial intricacies of a contractor's business upon which a surety or lender can readily rely when determining loan qualifications. The evaluations in Aycock cannot rise to the level necessary for predicating risk ranking in securing lines of credit. Decline of a contractor typically occurs gradually, with signs of deterioration visible only in the very late stages, so that measuring of such things as availability, design, production, and the like, which are very useful in determining supplier capabilities, are not be enough to establish risk assessment



of a contractor's financials. Lenders need much more in-depth financial reports, such as tax information, costs, profits, business plans, concurrent loans, and other financial documentation that simply is distinct from the information necessitated in Aycock et al. relied upon to establish whether a supplier shall be a vendor. The Examiner has indicated that GuruNet teaches a set of assessment statements that can be used to evaluate the financial practices of a company. Applicant respectfully disagrees, as GuruNet is basically a subjective, self assessment, set of statements rather than questions, which questions generally require a much more in depth answer as opposed to the statements, which require a 1 – 10 score in GuruNet. GuruNet does not establish financial information that can be utilized by a lender as a basis for support of critical financial lending decisions.

There is no suggestion to combine or modify the teaching of Aycock et al. and the GuruNet, and Bladen et al. references, as the purpose in Aycock et al. is to provide an objective survey appointed to simply establish a supplier's vendor capabilities and such capabilities is not predicated, nor concerned with a supplier's risk assessment as a barrower, and any combination of a subjective questionnaire with an objective survey is counter-productive. Therefore it is respectfully submitted that the combination of these references cannot properly be made in light of the teachings therein, but rather can be made only in light of applicant's own disclosure. Even still, any combination of the references would fail to yield the level of information that could be comfortably relied upon by a surety, as is required by applicant's present claims 1 – 13.

None of Aycock et al., GuruNet, and Bladen et al., taken alone, or in combination, disclose a contractor certification system as required by applicant's present claims 1 – 13.



In particular, none of Aycock et al., GuruNet, or Bladen et al., or any combination thereof, discloses or suggests a contractor certification system utilizing a survey means for assessing business and financial practices of a contractor, and further requiring that the financial practices of a contractor's business, determined by an independent third party based on answers provided by selected candidates being of varying levels within the company, be used to predicate risk ranking when securing lines of credit for the contractor's business.

Aycock et al. discloses an apparatus and method for providing an interactive evaluation of suppliers as proposed vendors for a project. The Aycock et al. patent provides a system and method used to analyze supplier capabilities in order to qualify a supplier as a vendor for a project. The supplier evaluation system taught by Aycock et al. provides for the selection of vendor requirements, selected and assigned relative weight on the basis of project objectives. These requirements are provided to a supplier, and the supplier submits responses thereto. The supplier responses are assigned a scaled score on the basis of corresponding vendor responses. The scaled score is correlated with the relative weight of the requirements, and a supplier maturity level is calculated. This supplier maturity level refers to the supplier's sophistication and capabilities in establishing and maintaining quality standards in the design, production, distribution, serviceability, and reliability of the supplier's product and service.

It is respectfully submitted that, none of Aycock et al., GuruNet, and Bladen et al., taken alone, or in combination, discloses or suggests a contractor certification system utilizing a survey means comprising a questionnaire provided to selected candidates comprising workers, foremen, project managers, engineers, and principals, found within

different organizational levels of a contractor's business. Applicant's present claims 1 – 13 require that the selected candidates comprise workers, foremen, project managers, engineers, and principals, thus resulting in a system wherein individuals at a plethora of different organizational levels of the contractor's business are questioned. Compiling the answers from these different candidates, as required by applicants' claims, provides a survey that examines virtually every level and aspect of the contractor's business and financial practices. Applicant's present claims 1 – 13 yields a certification system that derives a full gamut of expertise by questioning substantially all levels within the contractor's business. This multifaceted approach is not utilized by any system constructed from any combination of the Aycock et al., GuruNet, and Bladen et al. disclosures.

In addition, neither Aycock et al., GuruNet, nor Bladen disclose or suggest on-location assessment means comprising asking questions to each of the candidates selected through the mapping means and observing examples of the contractor's business practices and financial procedures as is required by applicants' present claims 1 – 13. Aycock et al. merely provides for an interactive evaluation of suppliers as proposed vendors for a project wherein suppliers respond to questions in order for a maturity level to be determined. Only if the supplier is not approved will a "Tier 2 analysis" take place wherein an on-site supplier audit takes place. (Aycock et al., Fig. 1). In Aycock et al. on-site evaluation only takes place if the supplier fails to be approved. There is no suggestion in Aycock et al. that direct questioning can be combined with direct observation, as required by applicant's present claims 1 – 13. In contrast to the Aycock et al. teaching, applicants have discovered that direct questioning can be advantageously

correlated with direct observations of on-site business and financial procedures. This multifaceted investigatory process, required by applicants' claims 1 – 13, as amended, delves deeper into the intricacies of the contractor's business than can be achieved through questioning alone. When compared to any system constructed from the combined teachings of the references, the system required by applicants' present claims 1 – 13 provides an on-location assessment component. This, in turn, enables a much more thorough evaluation the contractors' practices and a ranking having considerably higher reliability.

Claims 2 – 13 have been rejected by the Examiner under 35 U.S. C. §103(a) as being unpatentable over Aycock et al. in view of GuruNet, and further in view of Bladen et al. Claims 2 - 13 depend from currently amended claim 1, which is submitted to be patentable for the reasons set forth hereinabove. Inasmuch as claims 2 – 13 contain all the limitations of independent amended claim 1, it is submitted that these dependent claims are also patentable over the combined teachings of Aycock et al., GuruNet and Bladen et al.

Accordingly, reconsideration of the rejection of claims 1 – 13 under 35 USC §103(a) as being unpatentable over the combination of Aycock et al., GuruNet, and Bladen et al. is respectfully requested.

### **III. Official Notice– MPEP 2144.03**

The Examiner has asserted that it is old and well known in the art to administer surveys/questionnaires to people with sufficient knowledge and authority needed to provide accurate responses. Applicant respectfully submits that the Examiner's assertion

of fact is not an appropriate basis's of Official Notice because the fact asserted by the Examiner is not capable of instant and unquestionable demonstration. Moreover, the Examiner's assertion of fact that it is an old and well-known practice to administer surveys/questionnaires to people with sufficient knowledge and authority needed to provide accurate responses contradicts the teachings of the applied references of record, namely Aycock et al., GuruNet, and Bladen et al.

In *limited circumstances*, it is appropriate for an examiner to take official notice of facts not in the record or to rely on "common knowledge" in making a rejection; however, such rejections should be judiciously applied. MPEP 2144.03. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. MPEP 2144.03(A). It is not appropriate for an examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well known. MPEP 2144.03(A). Moreover, it is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. MPEP 2144.03(A).

Neither Aycock et al., GuruNet, nor Bladen et al. teach evaluations of a contractor's business as required by applicant's present claims 1 – 13. Instead, these references tend to contradict the importance of survey questionnaires to selected candidates within different organizational levels of a contractor's business. In particular, Aycock et al. teaches a self-evaluation system provided to suppliers wherein the suppliers

answer objective questions, and their responses are uploaded into an evaluation system so that a supplier maturity level is calculated. Different organizational levels may not even be necessary. What is generally necessary for the Aycock et al. system is that the individual be aware of supplies of certain items. GuruNet teaches a self-evaluation system wherein a list of statements is utilized to evaluate an individual's company in order to determine areas needing improvement. Bladen et al. teaches a method, system, and computer program product for risk assessment and risk management wherein self-evaluation is again utilized.

Clearly, there must be some form of evidence in the record to support assertions of common knowledge. Since there is no evidence on the record to support the assertions that evaluations of a business can be used for a plurality of applications, such as lines of credit and certifications that require renewal, such assertions are not properly based upon common knowledge under MPEP 2144.02 *et seq.*

Accordingly, it is respectfully requests that the Examiner produce authority in support of his statement or withdraw the official notice. 37 CFR §1.111(b); *Chevenard*, 139 F.2d at 713, 60 USPQ at 241; TMEP 2144.03 *et seq.* Further it is submitted that even assuming such authority can be found, the presence of a system for administering surveys/questionnaires to people with sufficient knowledge and authority needed to provide accurate responses would not, alone, disclose or suggest the need for a system that requires a multifaceted investigatory process, involving direct questioning of selected candidates from a broad spectrum of organizational levels, together with on-site evaluation, as required by applicants' claims. This unique combination features, though lacking in any system based on Official Notice, is required by the system of applicants'

claims 1 – 13, as amended. Together, these combined features enable the concise determination of a contractor's business and financial practices in a highly reliable manner, so that financial institutions can rely on the information when providing lines of credit to a contractor.

### **CONCLUSION**

In view of the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration and allowance of claims 1 – 13, as amended, are earnestly solicited.

Respectfully submitted,  
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